

**House Corrections and Juvenile Justice Committee  
February 20, 2017  
House Bill 2290**

**Testimony of the  
Kansas Association of Criminal Defense Lawyers  
Proponent**

Dear Chairman Jennings and Members of the Committee:

We support HB 2290 because teens should not be branded and punished as sex offenders for consensual acts with other teens. Frankly, we think the laws need to be changed further in order to address the draconian penalties that teens suffer; however, we welcome and support this start. In addition, we support the deletion of language that makes it a crime to engage in consensual sexual conduct between people (including teens) of the same sex. It is time to take unconstitutional laws out of Kansas statute books.

**What happens under current law**

The statute at issue in HB 2290 is K.S.A. 21-5507, the crime of unlawful voluntary sexual relations, commonly referred to as the Romeo and Juliet Law. (In the Shakespeare play by the same name, Juliet is 13 and Romeo is “a young man” whose age is not stated.) K.S.A. 21-5507 criminalizes voluntary sexual relations between teens aged 14-18 when one of the teens is under 16. 16 is the “age of consent” in Kansas. For reference, generally speaking the following happens (of course, this assumes that the teens involved are in school. There is a procedure by which a teen aged 16-18 can “drop out” of high school):

- Turn 13 in 7th grade (or the summer after)
- Turn 14 in 8th grade (or the summer after)
- Turn 15 in 9th grade (or the summer after)
- Turn 16 in 10th grade (or the summer after)
- Turn 17 in 11th grade (or the summer after)
- Turn 18 in 12th grade (or the summer after)

For all of the crimes discussed below (even the most serious), it is not a defense if the two teens involved did not know the age of the other teen. It is not a defense if one teen lied about their age. See K.S.A. 21-5204 (“Proof of a culpable mental state does not require proof: (b) that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which the accused is charged.”).

Also, please keep in mind that whether they are juvenile adjudications or adult convictions, these offenses are all person felonies and will count accordingly in calculating a person’s criminal history in the future, if necessary.

If a 14, 15, 16, or 17-year-old gets together with someone who is 14 or 15, then under K.S.A. 21-5507 (i.e. Romeo and Juliet law) either or both teen(s) could face:

Severity level 8 person felony for voluntary sexual intercourse  
Severity level 9 person felony for voluntary sodomy  
Severity level 10 person felony for voluntary lewd fondling or touching

Convictions and adjudications for unlawful voluntary sexual relations are not registrable offenses. See K.S.A. 22-4902(b) [this crime is not included in the definition of “sex offender” in the Kansas Offender Registration Act, and there is a Romeo and Juliet-type provision in (b)(2) and (17)]. Incidentally, there is no definition in the statutes for what constitutes “lewd fondling or touching.” The wording in the crime of indecent liberties is: “any lewd fondling or touching of the person of either the child or the offender [who, as we have discussed, can also be a child], done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both.” See K.S.A. 21-5506(a) (1), (b)(3).

If a 14 year old gets together with an 18-year-old, then K.S.A. 21-5507 (i.e. Romeo and Juliet) does not apply because the age range is not “less than four years,” so the teen who is 18 could face:

Severity level 3 person felony for consensual sexual intercourse (i.e. aggravated indecent liberties)  
Severity level 3 person felony for consensual sodomy (i.e. criminal sodomy)  
Severity level 5 person felony for consensual lewd fondling or touching (i.e. indecent liberties)

These convictions require sex offender registration for life for intercourse or sodomy, and 25 years for indecent liberties. See K.S.A. 22-4902(b)-(c); K.S.A. 22-4906(b)(1)(E), (d)(3)-(4).

If a 14, 15, 16, or 17-year-old gets together with someone who is 13, then the teen who is over 13 could face:

Severity level 1 person felony for consensual sexual intercourse (i.e. rape)  
Severity level 1 person felony for consensual sodomy (i.e. aggravated criminal sodomy)  
Severity level 3 person felony for consensual lewd fondling or touching (i.e. aggravated indecent liberties)

These are registrable sex offenses, even though the teen over 13 is a juvenile. The teen could be tried as an adult or as a juvenile. In the event the teen is transferred to adult court, then the registration would be for life for all offenses. If the teen stays in juvenile court, for the severity level 1s, it is lifetime registration. See K.S.A. 22-4906(h). For the aggravated indecent liberties, the court has some discretion in making the registration until age 18, making it nonpublic, or not requiring it at all. See K.S.A. 22-4906(g).

If a 13-year-old gets together with someone who is 18, then the 18-year-old would face an off-grid offense with a presumptive life sentence for all acts (i.e. touching, fondling, sodomy,

or sexual intercourse). If the 18-year-old gets a departure (or is ever released on the life sentence - the minimum amount of time that must be served is 25 years), that teen-later-adult will be on lifetime parole, lifetime electronic monitoring, and lifetime registration.

### **What HB 2290 would do**

HB 2290 would amend K.S.A. 21-5507 (i.e. Romeo and Juliet) to cover 13-year-olds. This means if a 14, 15, or 16-year-old gets together with someone who is 13, then either or both teen(s) could face:

- Severity level 8 person felony for voluntary sexual intercourse
- Severity level 9 person felony for voluntary sodomy
- Severity level 10 person felony for voluntary lewd fondling or touching

All of the other examples and applicable penalties set out above under “current law” would remain the same.

HB 2290 would eliminate unconstitutional language in K.S.A. 21-5507 (i.e. Romeo and Juliet law) by striking “when the child and the offender are members of the opposite sex.” The Kansas Supreme Court found this phrase in the statute unconstitutional almost 12 years ago, yet it remains. See *State v. Limon*, 280 Kan. 275 (2005) (finding the unlawful voluntary sexual relations statute violated the equal protection provisions of the Fourteenth Amendment to the United States Constitution and § 1 of the Kansas Constitution Bill of Rights; violation is “cured by severance of the words ‘and are members of the opposite sex’ from the statute”).

In years past, we have heard the argument that if it stays on the books, then it is there if the appellate courts ever reverse themselves. Keep in mind that if K.S.A. 21-5507 does not include same-sex teens someday, then if a 14, 15, 16, or 17-year-old gets together with someone who is 14 or 15, then either or both teen(s) could face:

- Severity level 3 person felony for consensual sexual intercourse (i.e. aggravated indecent liberties) (as compared to an 8 under Romeo and Juliet)
- Severity level 3 person felony for consensual sodomy (i.e. criminal sodomy) (as opposed to a 9 under Romeo and Juliet)
- Severity level 5 person felony for consensual lewd fondling or touching (i.e. indecent liberties) (as opposed to a 10 under Romeo and Juliet)

Again, these can be registrable offenses for juveniles - the court has some discretion in making the registration until age 18 or five years from adjudication (whichever is longer), making it nonpublic, or not requiring it at all. See K.S.A. 22-4906(g).

HB 2290 would also officially decriminalize consensual sodomy between members of the same sex who are 16 years of age and older. K.S.A. 21-5504 has contained this unconstitutional language for almost 14 years. See *Lawrence v. Texas*, 539 U.S. 558 (2003); *State v. Franco*, 49 Kan. App. 2d 924 (2014) (Court of Appeals found the same-sex provision of the Kansas sodomy statute to be unconstitutional based on *Lawrence*).

### What this bill does not do

It does not decriminalize sexual relations between teens where one or both of the teens is/are under 16. (This is something we hope to address another day.)

It does not change penalties/severity levels for sex offenses under K.S.A. 21-6627 (commonly referred to as Jessica's Law). It would still be a presumptive life sentence under K.S.A. 21-6627 for a 13-year-old and an 18-year-old to have sexual contact of any kind. (We think this is a draconian part of the law to be addressed another day.)

It does not change penalties/severity levels for nonconsensual acts between people of any ages. For example, a 14-year-old who forcibly has sex with a 13-year-old could still be prosecuted for rape.

It does not change the "gap" in K.S.A. 21-5507 from the current "no less than four years of age older".

It does not address any crimes other than the ones mentioned. For example, it does not deal with juveniles and pornography or electronic solicitation. (An example of the latter being a 16-year-old sending a text to her 15-year-old boyfriend, enticing him to come over and make out, which would be unlawful since she is 16 and he is 15 - that would be a severity level 3 electronic solicitation, even though it would be a severity level 10 for them to actually make out, since Romeo and Juliet law only applies to physical acts.)

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Our in-person testimony will further address why adding 13-year-olds to K.S.A. 21-5507 is appropriate. Again, we think there needs to be more discussions about the draconian penalties that teens face. But for now, we support HB 2290 and urge you to do the same.

Thank you for your consideration,



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## SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

**Probation Terms are:**

- 18 months recommended for felonies classified in Severity Levels 1-5
- 24 months recommended for felonies classified in Severity Levels 6-7
- 36 months (up to) for felonies classified in Severity Level 8
- 48 months (up to) for felonies classified in Severity Levels 9-10

**Postrelease Supervision Terms are:**

- 18 months for felonies classified in Severity Levels 1-4
- 24 months for felonies classified in Severity Levels 5-6
- 36 months for felonies classified in Severity Levels 7-10

**Postrelease for felonies committed before 4/20/95 are:**

- 24 months for felonies classified in Severity Levels 1-6
- 12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment